

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES



In re Application of:

Volker BECKER et al.

For: DEVICE AND METHOD FOR
 ETCHING A SUBSTRATE USING
 AN INDUCTIVELY COUPLED
 PLASMA

Filed: May 8, 2001

Serial No.: 09/762,985

MAIL STOP APPEAL BRIEF - PATENTS
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the
 United States Postal Service in an envelope addressed to:
 Mail Stop APPEAL BRIEF - PATENTS
 Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
 on April 3, 2008, sufficient postage as first class mail
 1763

Date: 4/3/2008
 Signature: AARON C. BEDFICH
 (33,365)

SECOND SUPPLEMENTAL/REPLACEMENT APPEAL BRIEF TRANSMITTAL
IN RESPONSE TO A NOTIFICATION OF NON-COMPLIANCE

SIR:

Accompanying this Appeal Brief Transmittal is a Second Replacement Appeal Brief pursuant to 37 C.F.R. § 41.37 (in triplicate as a courtesy) for filing in the above-identified patent application, in response to the Notification of Non-Compliance mailed on March 3, 2008.

(It is noted that the appropriate appeal brief of fee of \$510.00, which is the Appeal Brief fee under 37 C.F.R. § 1.17(c) (which is believed to be \$510.00) was already paid when the first Appeal Brief was filed, and therefore should not be charged again).

While no fees are believed to be due, the Commissioner is authorized, as necessary and/or appropriate, to charge any appropriate and/or necessary fees, including any Rule 136(a) extension fees, or credit any overpayment to Deposit Account No. 11-0600. Two duplicate copies of this transmittal are enclosed for these purposes.

Dated: 4/3/2008

Respectfully submitted,

By:

Gerard A. Messina
 (Reg. No. 35,952)
 KENYON & KENYON LLP
 One Broadway
 New York, New York 10004
 (212) 425-7200
 CUSTOMER NO. 26646

4/3/2008
 33,365
 Aaron C.
 (33,365)

U.S. Pat. App. Ser. No. 09/762,985
Attorney Docket No. 10191/1690
Second Replacement/Substitute Appeal Brief

[10191/1690]



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Volker BECKER et al.

X
: Examiner: L. Alejandro Mulero

For: DEVICE AND METHOD FOR
ETCHING A SUBSTRATE USING
AN INDUCTIVELY COUPLED
PLASMA

Filed: May 8, 2001

Serial No.: 09/762,985

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this communication is being deposited with the
United States Postal Service with sufficient postage as first class mail
in an envelope addressed to: Art Unit:
Mail Stop *APPEAL BRIEF* 176 P.A.T.S.
Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date: *4/3/2008*
Signature: *AARON C. DEDITION*
(33,865)

SECOND REPLACEMENT APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

SIR:

This Second Replacement Appeal Brief replaces the previously filed Appeal Brief and Replacement Appeal Brief and is believed to address all of the concerns in the Notification of Non-Compliant Appeal Brief of June 28, 2007 and the Notification of Non-Compliant Appeal Brief of March 3, 2008.

In the above-identified patent application ("the present application"), Appellants mailed a Notice Of Appeal on February 20, 2007 -- which was filed in the Office on February 26, 2007 -- from the Final Office Action issued by the U.S. Patent and Trademark Office on August 23, 2006, so that the two-month appeal brief due date was April 26, 2007 (since the Notice of Appeal was filed in the Office on February 26, 2007). An Appeal Brief was filed on May 25, 2007 (and mailed on May 22, 2007) (which date was previously extended). A

U.S. Pat. App. Ser. No. 09/762,985
Attorney Docket No. 10191/1690
Second Replacement/Substitute Appeal Brief

Notification of Non-Compliant Appeal Brief was issued by the U.S. Patent and Trademark Office on June 28, 2007 so that the one-month replacement appeal brief due date was July 28, 2007. A Replacement Appeal Brief was filed on December 3, 2007 (and mailed on November 28, 2007) (which date was previously extended).

In the Final Office Action, claims 42 to 45, 47 to 71 and 74 were finally rejected.

A response After A Final Office Action was mailed on January 19, 2007, and an Advisory Action was mailed on March 7, 2007.

It is understood for purposes of the appeal that any Amendments to date have already been entered by the Examiner, and that the Response After Final does not require entry since it included no amendments.

This Second Replacement Appeal Brief is believed to comply with all the requirements of Rule 41.37. It is noted that the "concise explanation" language of the Rule is like the "concise explanation" requirement of former Rule 37 CFR 1.192, and that the length of the concise explanation provided herein should therefore be acceptable, since the format was acceptable under 37 CFR 1.192 and since it specifically defines the subject matter of the relevant claims involved in the appeal. AARON C. DEDITCH (reg. no. 33,865) has filed many appeal briefs, the concise explanation for which has ultimately always been accepted by the Patent Office.

The previously filed Replacement Appeal Brief mailed on November 28, 2007 was deemed non-compliant in the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) of March 3, 2008. In the Notification: it was stated as to item 4(a) that "The brief does not contain a concise explanation", and it was stated as to item 10 that "[T]he independent claims do contain means plus function language (see line 5 of claims 42 and 74) which has not been identified/defined by the applicant".

It is believed that the means of claims 42 and 74 have been fully mapped as to their description in the specification, as required in the Notice of Non-Compliant Appeal Brief of March 3, 2008. The Office is encouraged to contact the undersigned if there are any questions as to the description of the claimed subject matter.

It is noted that the Patent Office Rules do not require the Applicants to include references cited by and relied upon by the Examiner in the Evidence Appendix (although it is

required by the Office for the Examiner). In the present Appeal, the Applicants have not submitted any evidence on which they intend to rely, so that the Evidence Appendix lists no evidence.

It is respectfully submitted that all matters have been corrected and that this Second Replacement Appeal Brief complies with 37 C.F.R. 41.37, and specifically moots the stated reasons for deeming the original Appeal Brief filed on March 2, 2007 and the Replacement Appeal Brief filed on December 3, 2007 as non-compliant, so that this Second Replacement Appeal Brief is compliant. Although no longer required by the rules, this Brief is submitted in triplicate as a courtesy to the Appeals Board.

It is respectfully submitted that the final rejections of pending and considered claims 42 to 45, 47 to 71 and 74 (*claims 1 to 30, 46, 72, and 73 are canceled, and claims 31 to 41 are withdrawn*) should be reversed for the reasons set forth below.

1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH (“Robert Bosch”) of Stuttgart in the Federal Republic of Germany. Robert Bosch is the assignee of the entire right, title and interest in the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no interferences or other appeals related to the present application, which “will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal”.

3. STATUS OF CLAIMS

CLAIMS 1 TO 30, 46, 72, AND 73 ARE CANCELED.

CLAIMS 31 TO 41 ARE WITHDRAWN.

1. Claims 42 to 45 and 47 to 71 were finally rejected under the first paragraph of 35 U.S.C. § 112 as to the written description requirement.
2. Claim 74 was rejected under 35 U.S.C. § 103(a) as obvious over Kadomura, U.S. Patent No. 5,662,819 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.
3. Claim 74 was rejected under 35 U.S.C. § 103(a) as obvious over Savas, WO 97/14177 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.
4. Claim 74 was rejected under 35 U.S.C. § 103(a) as obvious over Koshimizu, U.S. Patent No. 5,935,373 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.

Appellants therefore appeal from the final rejections of pending and considered claims 42 to 45 and 47 to 71. A copy of all of the pending and considered and appealed claims 42 to 45 and 47 to 71 (as well as withdrawn claims 31 to 41) is attached hereto in the Appendix.

4. STATUS OF AMENDMENTS

In response to the Final Office Action mailed on August 23, 2006, a Response After A Final Office Action was mailed on January 19, 2007 in response to the Final Office Action, and an Advisory Action was mailed on March 7, 2007.

It is understood for purposes of the appeal that any Amendments to date have already been entered by the Examiner, and that the Response After Final does not require entry since it included no amendments.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is described as follows, and is directed to addressing the following problems and/or providing the following benefits, and as described in the context of the present application.

Claim 42 is to a method for etching a silicon body substrate using a device having *an ICP source for generating a radio-frequency electromagnetic alternating field, a reactor for generating an inductively coupled plasma from reactive particles by the action of the radio-frequency electromagnetic alternating field on a reactive gas, and a first means for generating plasma power pulses to be injected into the inductively coupled plasma by the ICP source* (“ICP coil generator 17 injects a pulsed plasma power into inductively coupled plasma 14” (see specification, page 11, lines 26 to 27 and Figs. 1 and 2) To “inject a pulsed plasma power into the inductively coupled plasma, the output power of ICP coil generator 17 is switched on and off, i.e., pulsed, periodically” (see specification, page 17, lines 13 to 15), (“ICP coil generator 17 has a radio-frequency power amplifier 3 and a quartz oscillator 4 for generating a high-frequency fundamental component with a fixed frequency”) (see

specification, page 13, lines 17 to 20 and Fig. 2). Power amplifier 3 has generator control inputs 9 which are used for externally controlling ICP coil generator 17" (see specification, page 14, lines 5 to 7 and Fig. 2), and "generator status outputs 9' provide for the feedback of generator data (see specification, page 14, lines 10 to 12 and Fig. 2). In particular, claim 42 includes:

matching an impedance of one of an inductive coupled plasma and the ICP source to an ICP coil generator (see specification, page 11, lines 33 to 37); injecting a pulsed radio-frequency power into the inductively coupled plasma as a pulsed plasma power (see specification, page 18, lines 21 to 27);

in which the pulsing of the injected, pulsed radio-frequency power is accompanied by a change of a frequency of the injected, pulsed radio-frequency power, the change in the frequency being controlled so that the plasma power injected into the inductively coupled plasma during the pulsing is maximized (see specification, page 12, lines 15 to 20);

in which the ICP coil generator causes a variation of the frequency of the radio-frequency electromagnetic alternating field so that the impedance is matched as a function of the pulsed plasma power to be injected, so as to provide rapid switching between the pulses of the pulsed plasma power and interpulse periods (see specification, page 4, line 32 to 37); and

in which the variation of the frequency is automatically performed by a Meissner oscillator feedback loop between the ICP coil and the ICP coil generator input without measuring the ratio of magnitudes of applied and reflected power of the generator (see specification, page 13, lines 9 to 12 and page 15, lines 20 to 32). (See claim 42).

Claim 74 is to a method for etching a silicon body substrate using a device having *an ICP source for generating a radio-frequency electromagnetic alternating field, a reactor for generating an inductively coupled plasma from reactive particles by the action of the radio-frequency electromagnetic alternating field on a reactive gas, and first means for generating plasma power pulses to be injected into the inductively coupled plasma by the ICP source ("ICP coil generator 17 injects a pulsed plasma power into inductively coupled plasma 14")* (see specification, page 11, lines 26 to 27 and Figs. 1 and 2). To "inject a pulsed plasma power into the inductively coupled plasma, the output power of ICP coil generator 17 is switched on and off, i.e., pulsed, periodically" (see specification, page 17, lines 13 to 15). "In addition, ICP coil generator 17 has a radio-frequency power amplifier 3 and a quartz

oscillator 4 for generating a high-frequency fundamental component with a fixed frequency" (see specification, page 13, lines 17 to 20 and Fig. 2). "Power amplifier 3 has generator control inputs 9 which are used for externally controlling ICP coil generator 17" (see specification, page 14, lines 5 to 7 and Fig. 2), and "generator status outputs 9' provide for the feedback of generator data" (see specification, page 14, lines 10 to 12 and Fig. 2). In particular, claim 74 includes:

matching an impedance of one of an inductive coupled plasma and the ICP source to an ICP coil generator (see specification, page 11, lines 33 to 37);

injecting a pulsed radio-frequency power into the inductively coupled plasma as a pulsed plasma power (see specification, page 18, lines 21 to 27);

in which the pulsing of the injected, pulsed radio-frequency power is accompanied by a change of a frequency of the injected, pulsed radio-frequency power, the change in the frequency being controlled so that the plasma power injected into the inductively coupled plasma during the pulsing is maximized (see specification, page 12, lines 15 to 20);

in which the ICP coil generator causes a variation of the frequency of the radio-frequency electromagnetic alternating field so that the impedance is matched as a function of the pulsed plasma power to be injected, so as to provide rapid switching between the pulses of the pulsed plasma power and interpulse periods (see specification, page 4, line 32 to 37),

in which the variation of the frequency is automatically performed by a Meissner oscillator feedback loop between the ICP coil and the ICP coil generator input (see specification, page 13, lines 9 to 12 and page 15, lines 20 to 32), and

in which the variation of the frequency is such as to avoid high reflected powers back into the ICP coil generator when the plasma power is pulsed (see specification, page 5, lines 1 to 5). (See claim 74).

To the extent necessary, the additional information in the "Summary of the Claimed Subject Matter" from the originally filed Appeal Brief (which was filed on May 25, 2007) and the Replacement Appeal Brief (filed on December 3, 2007) are referenced and incorporated as necessary.

Finally, the means-plus-function language of the appealed claims has been identified and defined by reference to the relevant specification page and line number and to drawings by reference characters so that 41.37(v) is satisfied as to its specific requirements for such claims. The appealed claims include no step-plus-function claims, so that 41.37(v) is satisfied as to its specific requirements for such claims, since none are present here. In particular, the present application does not contain any step-plus-function claims because the method claims in the present application are not “step plus function” claims because they do not recite “a step for”, as required by the Federal Circuit and as stated in Section 2181 of the MPEP.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 42 to 45 and 47 to 71 were properly rejected under the first paragraph of 35 U.S.C. § 112 as to the written description requirement.
2. Whether claim 74 under 35 U.S.C. § 103(a) is unpatentable over Kadomura, U.S. Patent No. 5,662,819 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.
3. Whether claim 74 under 35 U.S.C. § 103(a) is unpatentable over Savas, WO 97/14177 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.
4. Whether claim 74 under 35 U.S.C. § 103(a) is unpatentable over Koshimizu, U.S. Patent No. 5,935,373 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.

7. ARGUMENT

A. The Written Description Rejections Under The First Paragraph of 35 U.S.C. § 112 As To Claims 42 to 45, 47 to 71

Claims 42 to 45, 47 to 71

The Office bears the initial burden of presenting “evidence or reasons why persons skilled in the art would not recognize in an applicant’s disclosure a description of the invention defined by the claims.” (See M.P.E.P. § 2163.04 (citing *In re Wertheim* 541 F.2d 257, 262, 265, 191 U.S.P.Q. 90, 96, 98 (C.C.P.A. 1976))) (emphasis added).

It is respectfully submitted that the Final Office Action’s arguments and assertions simply do not identify why the rejected claims are not supported by the written description of the present application (and its specification) — which it plainly is, as explained herein.

The Manual of Patent Examining Procedure specifically provides that if the Office rejects a claim based on the lack of a written description, the examiner should “identify the claim limitation not described” and also provide “*reasons why persons skilled in the art would not recognize the description of this limitation in the disclosure of the application.*” (See *id.*).

In this regard, the Final Office Action does not explain why a person skilled in the art would not recognize the exclusionary feature of claim 42. The Final Office Action also does not even address (let alone refute) the fact that since, for example, the specification (see pages 3 to 5) specifically discusses the reflected power problem, makes plain that it solves this problem by using, for example, frequency variation, so that there is no reference to solving the problem by using the prior reference approach of measuring the ratio of magnitudes of applied and reflected power of the generator -- which the Final Office Action only conclusorily asserts would have been known by those skilled in the art.

As stated by the Board in *Ex parte Harvey*, 3 U.S.P.Q. 2d 1626, 1627 (Bd. Pat. App. Int. 1986) (emphasis added, citations omitted):

Compliance with the written description requirement of Section 112 only requires that appellant’s application contain sufficient disclosure, *expressly or inherently*, to make it clear to persons skilled in the art that appellant possessed the subject matter claimed. The test for determining compliance with the written

description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession of the claimed subject matter, *rather than the presence or absence of literal support in the specification for the claimed language.*

Likewise, as stated by the Board in Ex parte Sorenson, 3 U.S.P.Q. 2d 1462, 1463 (Bd. Pat. App. Int. 1987) (emphasis added):

[W]e are mindful that appellant's specification need not describe the claimed invention in *ipsis verbis* to comply with the written description requirement. *The test is whether the originally filed specification disclosure reasonably conveys to a person having ordinary skill that applicant had possession of the subject matter later claimed.* Moreover, the Examiner has the initial burden of presenting evidence or reasons why persons skilled in the art would not recognize in appellant's specification disclosure a description of the invention defined by the claims.

In particular, the Sorenson Board, noting that the examiner only essentially stated that the claim expressions at issue did not “appear in the original disclosure” and that the claim expressions were therefore “not adequately supported by the few specific compounds in the specification”, found that the examiner had not met his initial burden of “presenting evidence why a person having ordinary skill in the art would not recognize in appellant's specification a description of the invention defined by the claims” — and that the “only reasoning presented” that the Board could discern was an “example of *ipse dixit* reasoning, resting on a bare assertion by the Examiner”.

In view of all of the foregoing, it is respectfully submitted that the Final Office Action's arguments and assertions do not satisfy the evidentiary and judicial standards discussed above, and it is respectfully submitted that the Final Office Action does not establish a prima facie written description case with respect to the present application. It is therefore respectfully submitted that the present application does satisfy the written description requirement of 35 U.S.C. § 112. Accordingly, it is respectfully submitted that the “written description” rejection of the claims should be reversed.

It is therefore respectfully submitted that the Final Office Action's arguments and assertions simply do not explain why the subject matter of the rejected claims is not supported by the written description of the present application — which it plainly is for the reasons explained herein.

**B. The “Kadomura”/”Collins”/”Koshimizu”
Rejection Under 35 U.S.C. § 103(a) Of Claim 74**

Claim 74

Claim 74 was rejected under 35 U.S.C. § 103(a) as obvious over Kadomura, U.S. Patent No. 5,662,819 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.

Independent claim 74 is supported by the present application (including, for example, the specification at pages 3 to 5), and includes the feature which provides that *the variation of the frequency is such as to avoid high reflected powers back into the ICP coil generator when the plasma power is pulsed*. This feature, as provided for in the context of claim 74, is in no way described or even suggested by any of the references applied to date.

Accordingly, claim 74 is allowable over the references applied to date, since they do not in any way disclose or suggest this feature.

As to the rejections in the Final Office Action, the rejections simply and conclusorily assert that this feature is somehow met by the combination of references -- *but provides no explanation or citations whatsoever as to how this is so*, and therefore essentially admits that the references provide no specific disclosure whatsoever as to these features of claim 74. It is respectfully submitted that any review of the references makes plain that they nowhere disclose or suggest the claim 74 features, so that claim 74 is allowable.

**C. The “Savas”/”Collins”/”Koshimizu”
Rejection Under 35 U.S.C. § 103(a) Of Claim 74**

Claim 74

Claim 74 was rejected under 35 U.S.C. § 103(a) as obvious over Savas, WO 97/14177 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.

Claim 74 is allowable over the references applied to date, since they do not in any way disclose or suggest the feature which provides that the variation of the frequency is such as to avoid high reflected powers back into the ICP coil generator when the plasma power is pulsed.

As to the rejections in the Final Office Action, the rejections simply and conclusorily assert that this feature is somehow met by the combination of references -- *but provides no explanation or citations whatsoever as to how this is so*, and therefore essentially admits that the references provide no specific disclosure whatsoever as to these features of claim 74. It is respectfully submitted that any review of the references makes plain that they nowhere disclose or suggest the claim 74 features, so that claim 74 is allowable.

**D. The “Koshimizu ‘373”/”Collins”/”Koshimizu”
Rejection Under 35 U.S.C. § 103(a) Of Claim 74**

Claim 74

Claim 74 was rejected under 35 U.S.C. § 103(a) as obvious over Koshimizu, U.S. Patent No. 5,935,373 in view of Collins et al., U.S. Patent No. 6,217,785, Wilbur, U.S. Patent No. 6,020,794, and Koshimizu, U.S. Patent No. 5,997,687.

Claim 74 is allowable over the references applied to date, since they do not in any way disclose or suggest the feature which provides that the variation of the frequency is such as to avoid high reflected powers back into the ICP coil generator when the plasma power is pulsed.

As to the rejections in the Final Office Action, the rejections simply and conclusorily assert that this feature is somehow met by the combination of references -- *but provides no explanation or citations whatsoever as to how this is so*, and therefore essentially admits that the references provide no specific disclosure whatsoever as to these features of claim 74. It is respectfully submitted that any review of the references makes plain that they nowhere disclose or suggest the claim 74 features, so that claim 74 is allowable.

As further regards all of the obviousness rejections discussed herein, in rejecting a claim under 35 U.S.C. § 103(a), the *Office* bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Thus, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim element and it must also suggest combining the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)).

Moreover, the “problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem.” (See Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998)). It is respectfully submitted that, as discussed above, the references relied on, whether taken alone or combined, do not suggest in any way modifying or combining the references so as to provide the presently claimed subject matter for addressing the problems and/or providing the benefits of the dynamic addressing feature of the claimed subject matter as explained herein and in the specification.

More recently, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not even the case here, there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed”, stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. *With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed.* In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper *prima facie* case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

(See In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Federal Circuit 2000) (italics added)). Here again, it is believed that there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference relied upon makes plain that it simply does not describe the features discussed above of the claims as now presented.

Thus, the proper evidence of obviousness must show why there is a suggestion as to the reference so as to provide the subject matter of the claimed subject matter and its benefits.

In short, there is no evidence that the reference relied upon, whether taken alone or otherwise, would provide the features of the claims discussed above. It is therefore respectfully submitted that the claims are allowable for these reasons.

As further regards all of the obviousness rejections of the claims, it is respectfully submitted that not even a *prima facie* case has been made in the present case for obviousness, since the Office Actions to date never made any findings, such as, for example, regarding in any way whatsoever what a person having ordinary skill in the art would have been at the

time the claimed subject matter of the present application was made. (See *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998) (the “factual predicates underlying” a *prima facie* “obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art”)). It is respectfully submitted that the proper test for showing obviousness is what the “combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art”, and that the Patent Office must provide particular findings in this regard — the evidence for which does not include “broad conclusory statements standing alone”. (See *In re Kotzab*, 55 U.S.P.Q. 2d 1313, 1317 (Fed. Cir. 2000) (citing *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1618 (Fed. Cir. 1999) (obviousness rejections reversed where no findings were made “concerning the identification of the relevant art”, the “level of ordinary skill in the art” or “the nature of the problem to be solved”))). It is respectfully submitted that there has been no such showings by the Office Actions to date or by the Advisory Action.

In fact, the present lack of any of the required factual findings forces both Appellants and any Appeals Board to resort to unwarranted speculation to ascertain exactly what facts underly the present obviousness rejections. The law mandates that the allocation of the proof burdens requires that the Patent Office provide the factual basis for rejecting a patent application under 35 U.S.C. § 103. (See *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 U.S.P.Q. 173, 177 (C.C.P.A. 1967))).

In short, the Examiner bears the initial burden of presenting a proper *prima facie* unpatentability case — which has not been met in the present case. (See *In re Oetiker*, 977 F.2d 1443, 1445, 24, U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)).

Accordingly, claim 74 is allowable.

In short, claims 42 to 45, 47 to 71 and new claim 74 are allowable for all of the above reasons.

U.S. Pat. App. Ser. No. 09/762,985
Attorney Docket No. 10191/1690
Second Replacement/Substitute Appeal Brief

CONCLUSION

In view of the above, it is respectfully requested that the rejections of claims 42 to 45, 47 to 71 and 74 be reversed, and that these claims be allowed as presented.

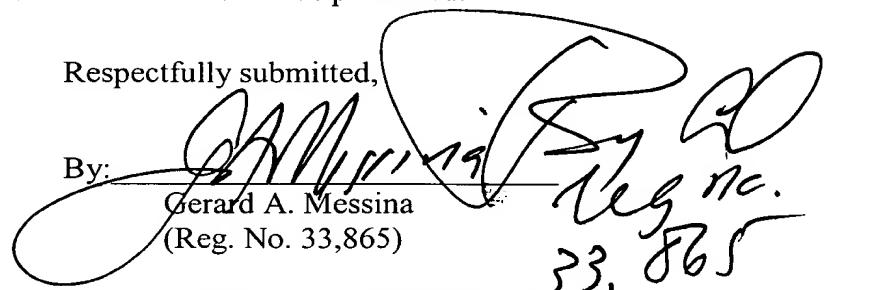
Dated: 4/3/2008

Respectfully submitted,

By:

Gerard A. Messina
(Reg. No. 33,865)

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200


33,865
Alvan C.
(Dec 15/08)

CUSTOMER NO. 26646

1498393



[10191/1690]

CLAIMS APPENDIX

1-30. (Canceled).

31. (Withdrawn) A device for etching a silicon body substrate (10) using an inductively coupled plasma (14), comprising: an ICP source (13) for generating a radio-frequency electromagnetic alternating field; a reactor (15) for generating the inductively coupled plasma (14) from reactive particles by the action of the radio-frequency electromagnetic alternating field on a reactive gas, and a first means for generating plasma power pulses to be injected into the inductively coupled plasma (14) by the ICP source (13).

32. (Withdrawn) The device according to Claim 31, wherein the first means is an ICP coil generator (17) which generates a variably adjustable, pulsed radio-frequency power with regard to the pulse to pause ratio of the plasma power pulses or the individual pulse power.

33. (Withdrawn) The device according to Claim 32, further comprising an impedance transformer (18) in the form of a balanced symmetrical matching network for matching an initial impedance of the ICP coil generator (17) to a plasma impedance which is dependent on the individual pulse power of the plasma power pulses to be injected.

34. (Withdrawn) The device according to Claim 33, wherein the impedance transformer (18) is preset in such a way that with a specified maximum individual pulse power of the plasma power pulses to be injected into the inductively coupled plasma (14) in the case of stationary power, a substantially optimum impedance matching is ensured.

35. (Withdrawn) The device according to Claim 32, wherein components are integrated into the ICP coil generator (17) which, via a variation of the frequency of the generated electromagnetic alternating field, perform impedance matching as a function of the individual pulse power to be injected.

36. (Withdrawn) The device according to Claim 35, wherein the ICP coil generator (17) includes an automatically acting feedback circuit having a frequency-selective

component (1), the feedback circuit having at least one controlled power amplifier, a frequency-selective band filter with a stationary frequency (1'N) to be attained and a delay line (7) or a phase shifter.

37. (Withdrawn) The device according to Claim 31, further comprising a second means for generating a static or time-variable, particularly pulsed magnetic field between the substrate (10) and the ICP source (13).

38. (Withdrawn) The device according to Claim 37, wherein the first means is a magnetic field coil (21) with an associated power supply unit (23) or a permanent magnet, the magnetic field generated by the magnetic field coil (21) via the power supply unit (23) being time-variable, capable of being pulsed in particular.

39. (Withdrawn) The device according to Claim 31, further comprising a substrate voltage generator (12) which can apply a continuous or time-variable radio-frequency power, a pulsed radio-frequency power in particular, to a substrate (10) arranged on a substrate electrode (11).

40. (Withdrawn) The device according to Claim 39, further comprising a first impedance transformer (12) for impedance matching between the substrate voltage generator (12) and the substrate (10).

41. (Withdrawn) The device according to Claim 39, wherein an ICP coil generator (17) is connected to the substrate voltage generator (12) or a power supply unit (23).

42. (Previously Presented) A method for etching a silicon body substrate using a device having an ICP source for generating a radio-frequency electromagnetic alternating field, a reactor for generating an inductively coupled plasma from reactive particles by the action of the radio-frequency electromagnetic alternating field on a reactive gas, and a first means for generating plasma power pulses to be injected into the inductively coupled plasma by the ICP source, comprising:

matching an impedance of one of an inductive coupled plasma and the ICP source to an ICP coil generator; and

injecting a pulsed radio-frequency power into the inductively coupled plasma as a pulsed plasma power;

wherein the pulsing of the injected, pulsed radio-frequency power is accompanied by a change of a frequency of the injected, pulsed radio-frequency power, the change in the frequency being controlled so that the plasma power injected into the inductively coupled plasma during the pulsing is maximized;

wherein the ICP coil generator causes a variation of the frequency of the radio-frequency electromagnetic alternating field so that the impedance is matched as a function of the pulsed plasma power to be injected, so as to provide rapid switching between the pulses of the pulsed plasma power and interpulse periods;

wherein the variation of the frequency is automatically performed by a Meissner oscillator feedback loop between the ICP coil and the ICP coil generator input without measuring the ratio of magnitudes of applied and reflected power of the generator.

43. (Previously Presented) The method according to Claim 42, wherein the pulsed plasma power is injected via an ICP source to which a radio-frequency electromagnetic alternating field having a constant frequency or a frequency which varies within a frequency range is applied around a stationary frequency.

44. (Previously Presented) The method according to Claim 42, wherein the pulsed radio-frequency power is generated with an ICP coil generator which is pulse-operated with a frequency of 10 Hz to 1 MHz and pulse to pause ratio of 1:1 to 1:100.

45. (Previously Presented) The method according to Claim 42, wherein a plasma power of 300 watts to 5000 watts on a time average is injected into the inductively coupled plasma and that the generated individual pulse powers of the radio-frequency power pulses are between 300 watts and 20 kilowatts.

46. (Canceled).

47. (Previously Presented) The method according to Claim 42, wherein during the etching, one of a static and time-variable magnetic field is generated, the direction of which is at least one of approximately and predominantly parallel to a direction defined by the connecting line of the substrate and the inductively coupled plasma.

48. (Previously Presented) The method according to Claim 47, wherein the magnetic field is generated in such a way that it extends into the area of the substrate and the inductively coupled plasma and has a field strength amplitude between 10-mTesla and 100 mTesla in the interior of the reactor.

49. (Previously Presented) The method according to Claim 47, wherein a magnetic field pulsed at a frequency of 10 Hz to 20 kHz is generated via the power supply unit, the pulse to pause ratio when the magnetic field is pulsed being between 1:1 and 1:100.

50. (Previously Presented) The method according to Claim 42, wherein one of a constant and time-variable radio-frequency power is applied to the substrate via a substrate voltage generator.

51. (Previously Presented) The method according to Claim 50, wherein the pulse duration of the radio-frequency power injected into the substrate is between one to one hundred times the period of oscillation of the high-frequency fundamental component of the radio-frequency power.

52. (Previously Presented) The method according to Claim 50, wherein the radio-frequency power applies a time-average power of 5 watts to 100 watts to the substrate, a maximum power of an individual radio-frequency power pulse being one to 20 times the time average power.

53. (Previously Presented) The method according to Claim 51, wherein the frequency of the injected radio-frequency power is between 100 kHz to 100 MHz and a pulse-to-pause ratio of the injected radio-frequency pulses is between 1:1 and 1:100.

54. (Previously Presented) The method according to Claim 42, wherein the pulsing of the injected plasma power and one of the pulsing of the radio-frequency power injected into the substrate via the substrate voltage generator and a pulsing of a magnetic field, the pulsing of the injected plasma power and the pulsing of the radio-frequency power injected into the substrate via the substrate voltage generator are one of time-correlated and synchronized with each other.

55. (Previously Presented) The method according to Claim 54, wherein the correlation takes place in such a way that the magnetic field is first applied, before a radio-frequency power pulse of the ICP coil generator, and the magnetic field is switched off again after the decay of this radio-frequency power pulse.

56. (Previously Presented) The method according to Claim 54, wherein the correlation takes place in such a way that during a radio-frequency power pulse of the ICP coil generator, the radio-frequency power injected into the substrate via the substrate voltage generator is switched off and/or that during a radio-frequency power pulse injected into the substrate via the substrate voltage generator, the radio-frequency power injected via the ICP coil generator is switched off.

57. (Previously Presented) The method according to Claim 54, wherein the synchronization takes place in such a way that during each time of a plasma power pulse injected into the plasma via the ICP coil generator, radio-frequency pulses injected into the substrate via the substrate voltage generator are also applied to the substrate.

58. (Previously Presented) The method according to Claim 54, wherein the correlation takes place in such a way that the radio-frequency power injected into the substrate via the substrate voltage generator is generated in each case during a power rise and/or a power drop of a radio-frequency power pulse injected into the plasma via the ICP coil generator.

59. (Previously Presented) The method according to Claim 54, wherein the correlation takes place in such a way that during the time of the plasma power pulses injected

into the plasma via the ICP coil generator and during the time of the pulse pauses between the individual plasma power pulses injected into the plasma via the ICP coil generator, at least one radio-frequency power pulse injected into the substrate via the substrate voltage generator is applied to the substrate in each case.

60. (Previously Presented) The method according to Claim 42, wherein the etching takes place in alternating etching and passivation steps at a process pressure of 5 μ bar to 100 μ bar.

61. (Previously Presented) The method according to Claim 45, wherein the radio-frequency power pulses are between 2 kilowatts to 10 kilowatts.

62. (Previously Presented) The method according to Claim 47, wherein one of the static and time-variable magnetic field is one of periodically varying and pulsed magnetic field.

63. (Previously Presented) The method according to Claim 50, wherein one of the constant and time-variable radio frequency power is a pulsed, radio-frequency power.

64. (Previously Presented) The method according to Claim 50, wherein a pulse duration of the radio-frequency power injected into the substrate is between one to ten times a period of oscillation of the high-frequency fundamental component of the radio-frequency power.

65. (Previously Presented) The method according to Claim 51, wherein the pulse duration is between one to ten times.

66. (Previously Presented) The method according to Claim 52, wherein the maximum power of an individual radio-frequency power pulse is between twice to 10 times the time average power.

67. (Previously Presented) The method according to Claim 53, wherein the frequency of the injected radio-frequency power is 13.56 MHz.

68. (Previously Presented) The method according to Claim 53, wherein the pulse-to-pause ratio of the injected radio-frequency pulses is between 1:1 and 1:10.

69. (Previously Presented) The method according to Claim 42, wherein the pulsed plasma power is in a kilowatt range.

70. (Previously Presented) The method according to Claim 42, wherein the pulsed plasma power is above 3 kilowatts.

71. (Previously Presented) The method according to Claim 42, wherein the ICP coil generator includes integrated components.

72. (Canceled).

73. (Canceled).

74. (Previously Presented) A method for etching a silicon body substrate using a device having an ICP source for generating a radio-frequency electromagnetic alternating field, a reactor for generating an inductively coupled plasma from reactive particles by the action of the radio-frequency electromagnetic alternating field on a reactive gas, and a first means for generating plasma power pulses to be injected into the inductively coupled plasma by the ICP source, comprising:

 matching an impedance of one of an inductive coupled plasma and the ICP source to an ICP coil generator; and

 injecting a pulsed radio-frequency power into the inductively coupled plasma as a pulsed plasma power;

 wherein the pulsing of the injected, pulsed radio-frequency power is accompanied by a change of a frequency of the injected, pulsed radio-frequency power, the change in the frequency being controlled so that the plasma power injected into the inductively coupled plasma during the pulsing is maximized;

 wherein the ICP coil generator causes a variation of the frequency of the radio-frequency electromagnetic alternating field so that the impedance is matched as a function of

U.S. Pat. App. Ser. No. 09/762,985
Attorney Docket No. 10191/1690
Second Replacement/Substitute Appeal Brief

the pulsed plasma power to be injected, so as to provide rapid switching between the pulses of the pulsed plasma power and interpulse periods,

wherein the variation of the frequency is automatically performed by a Meissner oscillator feedback loop between the ICP coil and the ICP coil generator input, and

wherein the variation of the frequency is such as to avoid high reflected powers back into the ICP coil generator when the plasma power is pulsed.

U.S. Pat. App. Ser. No. 09/762,985
Attorney Docket No. 10191/1690
Second Replacement/Substitute Appeal Brief

EVIDENCE APPENDIX

Appellants have not submitted any evidence pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132, and do not rely upon evidence entered by the Examiner.

U.S. Pat. App. Ser. No. 10/137,091
Attorney Docket No. 10191/2423
Replacement/Substitute Appeal Brief

RELATED PROCEEDINGS INDEX

There are no interferences or other appeals related to the present application.